

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

September 19, 2012

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, George Papandreas, Jim Shaffer

MEMBERS ABSENT: Bernie Bossio, Tom Shamberger

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Cardoso called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS:

A. Approval of the August 15, 2012 minutes. Fletcher stated that the minutes for the August 15, 2012 hearing would be included on the Board's October agenda.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. CU12-12 / PDA, LLC / 160 Fayette Street: Request by Project Management Services, on behalf of PDA, LLC, for conditional use approval of a "Restaurant, Private Club" in the B-4 General Business District at 160 Fayette Street; Tax Map 26A, Parcel 93.

Fletcher advised the Board that the petitioner's representative requested that this petition be placed on the Board's October agenda.

B. CU12-13 / Rocktop LLC / 341 Chestnut Street: Request by Kevin Wilkey of Lush Hospitality Group, on behalf of Rocktop LLC, for conditional use approval of a "Restaurant, Private Club" in the B-4 General Business District at 341 Chestnut Street; Tax Map 26A, Parcels 79 & 80.

Fletcher advised the Board that the petitioner requested that this petition be placed on the Board's October agenda.

C. V12-24 / Chestnut Hotel / Chestnut Street: Request by Joe Panico, on behalf of Manhattan Place, LLC for variance relief from Article 1369 as it relates to signage at 341 Chestnut Street; Tax Map 26A, Parcels 79 & 80; B-4, General Business District.

Fletcher read the Staff Report stating that the petitioner seeks to erect four (4) wall signs on the Chestnut Hotel that is currently under construction at 345 Chestnut Street. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(l) of the Planning and Zoning Code provides that the maximum area for all wall signs on a building in the B-4 District is 0.4 square feet per linear foot of tenant building frontage. The frontage of the hotel along Chestnut Street is approximately 58 feet. The maximum wall sign area is consequently 23.2 square feet.

The following summarizes the proposed wall sign plan:

- Sheet 1 of 3 – Awning facing Chestnut St.17.0 sq. ft. (15.71'W X 1.08'H)
- Sheet 2 of 3 – Vertical facing south towards Walnut St.....91.59 sq. ft. (2.58'W X 35.5'H)
- Sheet 2 of 3 – Vertical facing north towards Willey St.....91.59 sq. ft. (2.58'W X 35.5'H)
- Sheet 3 of 3 – Rear horizontal facing University Ave294.0 sq. ft. (49.0'W X 6'H)
- Total Proposed Wall Sign Area..... 494.18 sq. ft.
- **Requested Variance Relief**..... **470.98 sq. ft.**
(21.3 times the maximum area standard)

Cardoso recognized the petitioner Joe Panico, 507 Beechurst Avenue, who stated that he realizes the size seems large, but he feels the scale is nowhere comparable to the way the Ordinance reads. He stated that this is located on a one-way street and not nearly as visible as Hotel Morgan, for example. He referred to *Bookholder's* sign, which is very large and is comparable to what he is asking for. He feels this sign is vital to his business and that is why he is asking for variance relief.

Papandreas offered to recuse himself from this, since he is a nearby property owner, if Mr. Panico wished him to do so. Mr. Panico stated that would not be necessary.

There be no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective.

Recognizing that the B-4 District maximum wall sign area standard appears to be scaled for pedestrian messaging and the fact that vehicle travelers appear to be the primary audience to which hotels utilize on-premise signage, variance relief appears prudent.

However, the petitioner’s variance relief appears to be substantially more than that requested for or granted by the Board of Zoning Appeals since the current sign regulations were enacted in January 2006.

As such, Staff recommends that the Board and petitioner consider the following alternates, which are listed in the order of highest to lowest in terms reducing the extent of variance relief and assumes no changes to the awning sign facing Chestnut Street.

Alternate 1: Eliminate the two north and south facing vertical signs and reduce the rear facing horizontal sign by 50% in area, which reduces variance relief from 470.98 sq. ft. to 140.8 sq. ft. or 6.1 times the maximum area standard.

Alternate 2: Eliminate one of the vertical signs, eliminate the contrasting color of the remaining vertical sign, and reduce the rear facing horizontal sign by 50% in area, which reduces variance relief from 470.98 sq. ft. to 194.05 sq. ft. or 8.4 times the maximum area standard.

Alternate 3: Eliminate the contrasting color of the two vertical signs and reduce the rear facing horizontal sign by 50%, which reduces variance relief from 470.98 sq. ft. to 247.3 sq. ft. or 10.7 times the maximum area standard.

Alternate 4: Eliminate the contrasting color of the two vertical and rear horizontal signs, which the Board of Zoning Appeals must determine reduces variance relief from 470.98 sq. ft. to 288.3 sq. ft. or 12.4 times the maximum area standard. whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

Should the Board move to grant variance relief for V12-24 under any scenario, Staff recommends that the following conditions be included:

1. That the individual letters comprising the proposed wall signage be opaque and made of an ornamental metal such as bronze, brass, copper, stainless steel, etc. or painted stainless steel or painted aluminum.
2. That the proposed wall signage may only be illuminated by reverse lighting (also referred to as “halo letters”) directed to the wall to create a negative space at night; provided, the color of the reverse lighting is cool, pale, or incandescent white (colors normally associated with LED lighting) or an equivalent color should a non-LED lighting system be utilized; provided, all electrical conduit and routing for the reverse lighting are integrated or disguised into the façade of the wall upon which the sign is mounted.

Shaffer said he liked the scheme of the signs, but the size does concern him. He said he appreciates the alternatives provided by Staff and would be willing to work with them to find a solution.

Cardoso stated that, given the one-way street, one of the signs is not really going to be visible by cars, but she understands the desire to be consistent.

Fletcher stated that, coming down Walnut Street the buildings in question are closer to Chestnut Street than the parking garage. Going up Fayette Street, *J.S. Walker* is on the corner, but behind that there is a parking lot, which provides some open space.

Papandreas agreed with Cardoso's observation and wondered if perhaps "Chestnut Hotel" could be put on the return side of the awning. He feels that on the drawing, the signs are scaled correctly for the size of the building, but he is concerned about granting such a large variance for that area.

Fletcher stated that since the awning is not very wide or tall, the signage on the awning would probably not be very visible or effective.

Cardoso recognized Panico, who stated that he could put the signage on the side of the canopy as another option. He stated that if the Board would allow him to work with Mr. Fletcher, he could come up with a plan that would substantially reduce the size of the signage.

Papandreas stated he is a little conflicted because he feels that a smaller horizontal sign might be more visible.

Cardoso stated that she has no issues with the front of the hotel. The rear signage is rather large, but because of the distance between it and the road, it is probably appropriate.

Fletcher pointed out that by removing the backdrop from the rear sign, it would reduce the overall size by 36%. Given the fact that there is a lot of other visual noise in the form of power lines, buildings, etc. that the rear sign will be competing with in messaging to vehicles traveling southbound on Beechurst Avenue, Fletcher stated that if the rear sign is designed appropriately, even without the backdrop, it should be effective.

Fletcher stated that, based on the Board's discussion and the petitioner's willingness to reduce the extent of the variance being sought, he offered a fifth alternate plan for the Board to consider, which included the following:

- The North facing, vertical sign must be removed from the proposed sign plan thereby reducing the extent of the overall wall sign variance requested.
- The contrasting color of the rear horizontal sign facing University Avenue must be removed from the proposed sign plan thereby reducing the area of said wall sign.
- The contrasting color of the South facing, vertical sign must be removed from the proposed sign plan thereby reducing the area of said wall sign.
- To the satisfaction of the Planning Division, a maximum area of 17 square feet maybe used to design a pedestrian-scaled wall sign facing North on either the building or the canopy.

Cardoso asked what the variance would be under this fifth alternate.

Fletcher calculated that the total wall sign area would be 275.25 sq. ft. requiring a variance of 252.05 sq. ft., which is 10.9 times the maximum.

Papandreas made a motion to approve the Findings of Facts as revised by Staff; seconded by Shaffer. Motion carried unanimously.

Shaffer made a motion to grant variance relief for Case No. V12-24 as described by Staff under the fifth alternate sign plan; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. CU12-14 / Kappa Sigma / 200 Belmar Avenue:** Request by Cory Kourtsis of Commercial Builders, Inc., on behalf of Kappa Sigma Fraternity, for approval of a conditional temporary off-premise parking use at 200 Belmar Avenue; Tax Map 26, Parcels 167 & 168.

Fletcher read the Staff Report stating that the petitioner seeks conditional use approval under Article 1365.07 of the Planning and Zoning Code to temporarily meet minimum parking requirements on a site owned by West Virginia University and across Belmar Avenue from the Kappa Sigma Fraternity. Addendum A of this report illustrates the location of the subject site.

On January 21, 2012, the Board of Zoning Appeals approved variance petition V12-01 providing relief from the minimum parking requirement so that the petitioner could develop eleven (11) on-site parking spaces rather than the twenty-one space minimum standard calculated by Staff. The location of the permanent on-site parking lot was approved at the foot of the hill behind and below the fraternity house and accessed from North High Street and Glendon Street.

Staff understands that during the course of the petitioner's extensive remodeling of the long-standing vacant dilapidated fraternity house and the construction of a new assembly area addition, the Kappa Sigma Fraternity fund raising efforts fell short of its capital goal. As such, the Fraternity seeks to establish temporary parking for a period of twelve (12) months so that additional capital fund raising can be completed and the parking lot developed as originally approved.

The property on which the temporary parking is proposed is owned by West Virginia University and is less than 100 feet from the fraternity house. The site is currently used and managed by the WVU for parking and is therefore exempt from Article 1365.07(A)(2), which restricts off-site parking locations to zoning districts where commercial parking lots are permitted as a principal or conditional use.

Cardoso recognized the petitioner representative Cory Kourtsis of Commercial Builders, who stated that back in January 2012, a Variance was received to provide 11 off-street parking spaces below the fraternity. At that time, the structure was remodeled and an addition added on. Once the final parking plan was finished, it came in extremely over budget due to MUB requiring extensive storm water management and the fact that several retaining walls would need to be built. This conditional use approval would buy more time to raise the funds to construct the parking area.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that CU12-14 be approved as requested with the following conditions:

1. That the certificate of occupancy for the Kappa Sigma Fraternity house located at 200 Belmar Avenue be conditioned upon the fraternity's ability to maintain a lease or similar written executed agreement by and between the Kappa Sigma Fraternity and West Virginia University or its agent to utilize its property (Tax Map 26, Parcel 170) for the purpose of providing no less than eleven (11) parking spaces for the use and enjoyment of residents and visitors of the Kappa Sigma Fraternity.
2. That said lease or similar written executed agreement shall be filed with the Planning Division and made available for inspection at the request of the City.
3. That the certificate of occupancy for the Kappa Sigma Fraternity house located at 200 Belmar Avenue be conditioned upon final construction of the originally approved on-site parking lot and available for use to the satisfaction of the City Engineer no later than Sunday, January 5, 2014.

Fletcher explained that the deadline was chosen because it is the Sunday before the student return for second semester. If the funds are not available for the parking area at that time, the petitioner has the option of petitioning for an extension.

Shaffer moved to accept the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. CU12-14 with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- E. CU12-15 / Pryce / 226 High Street:** Request by Leyonne Pryce for conditional use approval of a "Restaurant, Private Club" in the B-4, General Business District at 226 High Street; Tax Map 26A, Parcel 137.

Fletcher read the Staff Report stating that petitioner seeks to establish a "Restaurant, Private Club" use that will include a license with the West Virginia Alcohol Beverage Control Administration (WVABCA) to sell beer, wine, and liquor. Table 1331.05.01 "Permitted Land Uses" provides that the development of "Restaurant, Private Club" uses in the B-4 District requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

The location of the proposed "Restaurant, Private Club" is in the former *High Street Billiards & Cue*, which obtained similar conditional use approval by the Board of Zoning Appeals on June 17, 2009 under CU09-03.

Mr. Metheny of High Street Pub, LLC has since found a new proprietor to accept ownership and management of the restaurant. Because the petitioner is not purchasing the beneficiary of the CU09-03 approval (High Street Pub, LLC), the petitioner must obtain a new conditional use approval to apply for a liquor license with the WVABCA.

According to the petitioner's application and exhibits, the proposed restaurant will be called "Tunez and Cue" and will be a music-themed restaurant with late night delivery. The menu will consist of the fare similar to that offered by the former *High Street Billiards & Cue* along with additional hot and cold sandwiches and various dinner portion dishes named after musical influences.

The owner of "Tunez and Cue", and beneficiary of the subject conditional use, will be Tunez and Cue, LLC, which appears to include Mr. Leyonne Pryce and Mr. Courtney Williams according to the West Virginia Secretary of State's online database.

The interior layout and seating arrangement and capacity will be nearly identical to that used by *High Street Billiards & Cue* with approximately 110 patrons at tables and 45 patrons at the bars.

The proposed operating days are seven days a week with hours on Tuesday through Saturday from 12:00 PM to 2:00 AM and delivery only after 3:00 AM and delivery only from 12:00 PM to 2:00 AM on Sundays and Mondays. Staff has no working knowledge as to whether or not the petitioner's WVABCA license may restrict food preparation and delivery after the closing hours customarily established therein. Addendum B of this report contains related excerpts from the Planning and Zoning Code Article 1331.06(27).

Cardoso recognized the petitioner Leyonne Pryce of 226 High Street, who stated that this is a restaurant/gaming entity, with music. They will feature movie/dinner specials in their theater room, and they have a larger room for benefit dinners. They will open at 11:00 a.m., but eventually hope to add breakfast. He feels sure they will be able to comply with the 60/40 food/beverage rule.

Shaffer stated that, in looking at the resumes, he does not see where anyone has this type of prior restaurant experience. Mr. Pryce stated that his partner, who is in New York currently, has most of the managerial experience and will be present more than 50% of the time.

Papandreas shared Shaffer's concern, stating that in prior conditional uses and waivers of the one-year time frame, there has been more restaurant experience than what is shown here.

Cardoso stated that she can see that Mr. Pryce's strength is in music, but feels that restaurant management seems to be lacking.

Shaffer stated that he really wants to see this be a success, but he would like to see the applicant come back in a year and show what he has done.

There being no further questions or comments by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of the request.

Chris DiAngelo, 226 High Street, who spoke in favor of the request, stated that he spent several years in the military as a cook and has extensive management experience. He stated that he would be very involved in this establishment in a managerial capacity.

Gregg Metheny, who was the previous owner, stated that earlier this year, he made a decision to get out of the bar business for family reasons. He said that he interviewed several persons who were interested in the property and felt that these gentlemen have a good plan. He gave them a very favorable lease agreement, inclusive of all existing equipment. He agrees that it would be a good idea to spend some time with the food to be able to prove that they can meet

the 60/40. He stated that his recommendation would be to table this request, let them spend time with their food person, the menu, etc., and then come back several months down the road when they are more settled.

Shaffer commended Mr. Metheny for his recommendation and stated that he agreed. He asked Mr. Pryce when he planned to open, to which Mr. Pryce answered hopefully in a couple of weeks.

Adam Menear, 226 High Street, thanked the Board for their consideration. He also stated that he fully understands their concern with his resume, as he has been out of the restaurant business for about 10 years. He agreed with Mr. Matheny's recommendation and urged the applicant to hold off on the request for now. He emphasized that he does feel it is a good concept and has the potential to be successful.

There being no further comments in favor of the request, Cardoso asked if anyone was present to speak in opposition of the request. There being none, Cardoso declared the public hearing closed.

Fletcher stated that, based on the Board's discussion and the public comments, he recommended that the applicant consider withdrawing the conditional use petitioner rather than the Board tabling the matter.

Cardoso asked the petitioner to step to the podium and asked him how he felt about withdrawing the request.

Mr. Pryce stated that he has no problem withdrawing the request and coming back in several months to reapply for the conditional use. He asked the Board how many months they felt were reasonable before he comes back. The Board suggested at least three to four months would most likely be the minimum time for the restaurant to establish itself.

Mr. Pryce stated that he would withdraw his conditional use petition.

- F. CU12-16 / Tera Properties, LLC / Protzman and Glenn:** Request by Project Management Services, on behalf of Tera Properties LLC, for approval of a conditional "Multi-Family Dwelling" use in the R-2, Single- and Two-Family Residential District at Protzman and Glenn; Tax Map 20, Parcels 445, 446, 447.

Fletcher read the Staff Report stating that the petitioner seeks to raze two structures at 480 Protzman Street and construct a multi-family housing development with required parking. Table 1331.05.01 "Permitted Land Uses" provides that multi-family dwelling uses in the R-2 District require conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location

The petitioner's proposed development program details include:

- A two and a half story building as measured under the Planning and Zoning Code with four habitable levels – one in the basement level and one in the half-story level above the second story.
- Eight (8), two-bedroom units and three (3) one-bedroom units.
- Seventeen (17) on-site parking spaces, three more spaces than required.

- Minor subdivision MNS12-17 petition to combine the site's three (3) parcels was approved by the Planning Commission on September 13, 2012.

The Board of Zoning Appeals approved similar conditional use petitions (CU11-05 and CU11-13) for the petitioner along Stewart Street.

Cardoso recognized the petitioner's representative Lisa Mardis of Project Management Services, 160 Fayette Street. Mardis stated that the petitioner would like to raze the structures in order to build a multi-family development. She feels that with the plans, access along Protzman will be improved. All utilities are readily available, and this development is within walking distance to many WVU amenities. She stated that the growing trend for this area seems to be multi-family, and many smart-growth recommendations were implemented.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the proposed redevelopment appears to be consistent with the character, scale, and density of recently constructed multi-family developments within the immediate area. The City's recent construction of a sidewalk connecting Vangilder Street down Protzman Street to the WVU's Vandalia Hall provides safe walking between the site, the downtown WVU campus, and established public transit routes. The building provides all necessary parking places and driveways, as well as loading and trash receptacle areas.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact".

With the exception of the red strikethrough highlighted in the petitioner's response to Finding of Fact Number 6, Staff concurs with the petitioner's submitted findings of fact.

Staff recommends approval of the conditional use as requested with the following conditions:

1. That the related minor subdivision final plat (Case No. MNS12-17) must be recorded at the Monongalia County Courthouse prior to the issuance of a permanent Certificate of Occupancy.
2. That the development must meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
3. That the petitioner shall incorporate, to the satisfaction of the Planning Division, all reasonable Technical Review Team recommendations in plans submitted with related building permit applications.
4. That the final Landscaping Plan and Lighting Plan must be submitted and approved as a part of the building permit review process and comply with related standards in Article 1367 and Article 1371 respectively unless variance relief is granted by the Board of Zoning Appeals.
5. That all exterior stairs, steps, landings, elevated walkways, railings, and support members may not be comprised of exposed wood or treated lumber.

6. That the dumpster shall be enclosed with masonry materials at least six (6) feet in height and include an opaque gate, standard concrete access apron, and concrete bollards at the rear of the enclosure to protect same from damage.
7. That any sidewalk or portion thereof along the project site's Protzman Street frontage damaged or destroyed during construction shall be replaced to the satisfaction of the City Engineer prior to the issuance of a permanent Certificate of Occupancy.

Fletcher added that he wanted to thank the petitioner's design professionals for their efforts in working with the City as the plans before the Board included significant site design changes requested during the technical review team meetings.

Papandreas moved to accept the Findings of Fact as revised by Staff; seconded by Shaffer. Motion carried unanimously.

Shaffer moved to approve Case No. CU12-16 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- G. **V12-07 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for variance relief from Article 1339.04 as it relates to a side setback at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.
- H. **V12-29 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for variance relief from Article 1339.04 as it relates to a front setback at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.
- I. **CU12-09 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for approval of a conditional off-premise parking use for development at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.
- J. **V12-08 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for variance relief from Article 1361.03(Q)(1) as it relates to a non-residential space on the ground floor at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.
- K. **V12-09 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for variance relief from Article 1361.03(P) as it relates to building materials at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.

- L. **V12-10 / Friend Rentals, LLC / 146 Third Street:** Request by Project Management Services, on behalf of Friend Rentals, LLC, for variance relief from Articles 1361.03(E), 1361.03(O)(1), and 1361.03(O)(6) as it relates to fenestration at 146 Third Street; Tax Map 20, Parcels 47 & 48; R-3, Multi-Family Residential District.

Fletcher read a combined Staff report for Agenda Items G through L, stating that the petitioner seeks to raze two functionally obsolete and dilapidated structures and construct a multi-family dwelling structure at 146 Third Street. Addendum A illustrates the location of the subject.

The combined area of the two parcels is approximately 2,700 square feet, which is 1,300 square feet less than the minimum parcel size within the R-3 District. Because the parcels are considered pre-existing, non-conforming parcels, the Planning Commission approved MNS12-14 on September 13, 2012 to combine Parcels 47 and 48 of Tax Map 20 so that the property can be assembled and redeveloped.

The follow summary details the proposed development program.

- Four story building with five habitable levels including the basement.
- Five three-bedroom units.
- Parking is proposed at an existing off-site parking area across Third Street on the McLane Manor site, which is less than 100 feet from the subject site.

The following narrative addresses each variance and conditional use petition separately.

V11-07 – Variance relief from Article 1339.04(B) as it relates to a side setback encroachment on a corner lot.

The minimum side setback on a corner lot in the R-3 District is 7.5 feet. The petitioner seeks a variance of 2.5 feet so that the proposed building can be constructed with a side setback of 5 feet. The proposed side setback does not appear to adversely impact the adjoining public right-of-way.

V12-29 – Variance relief from Article 1339.04(A)(1) as it relates to a front setback encroachment.

The minimum front setback in the R-3 District is 10 feet. The proposed building is located at the ten-foot front setback line. However, the petitioner wishes to construct a roof over the front porch to better integrate the design of the proposed building with predominant architectural design elements of the neighborhood's built environment. The proposed roof will encroach into the front setback by approximately 5 feet. The Board granted similar variance relief at 701 – 715 McLane Avenue under V12-27.

CU12-09 – Conditional use approval of off-site parking under Article 1365.07.

The minimum parking requirement for multi-family dwellings within the Sunnyside Overlay District is 0.5 spaces per occupant as provided in Article 1361.04(Q)(3). The minimum parking requirement for the proposed development is therefore 8 spaces.

Article 1361.04(Q)(2) provides that on-street parking spaces immediately adjacent to a land use can be counted toward fulfilling parking requirements for the use. It is the opinion of the

Planning Division that there is one on-street parking space meeting immediately adjacent to the petitioner's site. As such, the petitioner must provide seven (7) off-street parking spaces.

Because of the significantly limited space available to provide on-site parking on the 2,700 square foot site, the petitioner seeks to provide the seven (7) spaces on property he owns immediately across the street from the development site.

Aside from the thirteen (13) on-street parking spaces along McLane Avenue identified by the petitioner, there are approximately 31 parking spaces on the McLane Manor site. The minimum parking requirement for the McLane Manor development and the 146 Third Street development is 23 spaces. As such, there appears to be a sufficient number of parking spaces on the McLane Manor site to the minimum parking needs for both McLane Manor and the proposed development at 146 Third Street.

V12-08 – Variance relief from Article 1361.03(Q)(1) as it relates to a non-residential space on the ground floor.

The predominant configuration of parcels along Third Street are narrow frontages and corner parcels fronting intersecting streets (i.e. Grant Avenue), which leaves relatively constricted and disconnected opportunities of commercial storefront development.

Very few of the parcels along Third Street appear to have been “assembled” for the redevelopment of more intense mixed-uses. Even if parcels are “assembled” along Third Street, the steep grade would result in the stepping of commercial storefronts. The steep grade of sidewalks along Third Street presents accessibility challenges to commercial uses, particularly for persons with disabilities.

With the exception of corner parcels fronting Beechurst Avenue, all uses along Third Street are residential. The requirement of providing commercial space along Third Street therefore attempts to create retail activity rather than preserve or expand existing commercial uses. Given the physical constraints noted above, market absorption of commercial space along Third Street appears challenging and uncertain.

The Board has granted similar variance relief along Third Street for the reasons noted above.

V12-09 – Variance relief from Article 1361.03(P) as it relates to building materials at 146 Third Street.

The petitioner seeks to utilize manufactured or cultured masonry materials and cementitious siding (i.e. Hardy Plank siding) instead of natural materials as required in the Sunnyside Overlay Districts. Because the proposed cladding does not meet the natural and composite material standards, variance relief is required. The Board has granted similar variance relief throughout the Sunnyside neighborhood recognizing the quality, durability, and reduced maintenance cost associated with these building materials.

V12-10 – Variance relief from Articles 1361.03(E), 1361.03(O)(1), and 1361.03(O)(6) as it relates to fenestration.

The front façade fenestration requirements along primary streets within the Sunnyside Overlay District are intended to accommodate commercial uses on the ground floor. Should variance relief be granted so that ground floor commercial/retail space is not required for the subject

development, it is reasonable to conclude that transparency design should be scaled to better reflect residential uses.

Additionally, the mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses. It is the opinion of the Planning Division that the design method of achieving desired shadowing effect for windows should be flexible rather than narrowly prescriptive.

The Board has granted similar variance relief within the Sunnyside neighborhood where it agreed that commercial uses were not anticipated to positively affect neighborhood-scaled commercial activity given specific challenges of the respective sites; in this case, the steep terrain of Third Street.

Cardoso recognized the petitioner's representative Lisa Mardis of Project Management Services, 160 Fayette Street. Mardis stated that the petitioner would like to increase the property value by razing and removing the blighted structures and replacing them with student housing which would be within walking distance to the downtown campus and in close proximity to public transportation. Mr. Friend and his design partners have worked diligently to incorporate the Sunnyside overlay elements set forth in the zoning code, but find it necessary to humbly ask for these variances, which are similar, to what was approved at other nearby developments. She emphasized that by removing the structures, two encroachments – one to City property – and one to a nearby private property – will be removed.

Shaffer asked for clarification on the parking. Mardis stated that parking will need to go across the street, due to lack of space on the property.

Fletcher suggested that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for all of the five (5) variance and one (1) conditional use petitions presented herein. However, each respective variance and conditional use petition must be considered and acted upon by the Board separately.

There being no further comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of the request.

Doug Shepherd, HTM Properties, who owns property adjacent to this property, voiced his support for this project as he feels it will enhance the property values and be a very positive addition to the area.

Fletcher read a letter from Don Corwin, Wincor properties, supporting the project.

There being no further comments in support of the petition, Cardoso as if anyone was present to speak in opposition. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance or conditional use respectively by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. With the exception of Staff recommended revisions to the petitioner's findings of fact for CU12-09 noted in Addendum B attached hereto, Staff recommends that each of the findings of fact submitted by the petitioner be accepted without revision.

Staff recommends approval of each of the variance and conditional use petitions with the following corresponding conditions:

V11-07 – Variance relief from Article 1339.04(B) as it relates to a side setback encroachment on a corner lot.

NO RECOMMENDED CONDITIONS.

V12-29 – Variance relief from Article 1339.04(A)(1) as it relates to a front setback encroachment.

1. That the columns supporting the front porch roof and railings may not include exposed wood or treated lumber.

CU12-09 – Conditional use approval of off-site parking under Article 1365.07.

1. That an accessible route to the off-site parking area meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
2. That the off-site parking facility be encumbered by an easement or similar agreement, to the satisfaction of the Planning Division, which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located (Tax Map 19 Parcel 103) is encumbered by the parking use of the subject rental unit for no less than seven (7) spaces. That this instrument must bind the use for *no less than three-years*. That said instrument must be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. That the Certificate of Occupancy for the subject dwelling space shall be contingent upon the continuance of said agreement and encumbrance and should said agreement and encumbrance be annulled for any reason at any time, said Certificate of Occupancy shall be revoked upon written notification by the Planning Division. That a valid and current copy of said instrument must be made available at the request of Planning Division.
3. That the proposed seven (7) spaces shall have signs noting the rental unit for which the spaces are reserved. That such signage shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stalls. That the text on the sign state "This space is reserved for residents located at [address assigned by City Engineer] only, per City Code 1365.07(D)."
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

V12-08 – Variance relief from Article 1361.03(Q)(1) as it relates to a non-residential space on the ground floor.

NO RECOMMENDED CONDITIONS.

V12-09 – Variance relief from Article 1361.03(P) as it relates to building materials at 146 Third Street.

1. That exterior stairs, steps, landings, porch decking, railings, and support members may not be comprised of exposed wood or treated lumber.

2. That the above foundation exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile.
3. That, to provide for a more durable cladding surface where the proposed garbage storage coral is located and the rear entrance, the manufactured or cultured masonry cladding used on the ground level or first story along the adjoining alley must also be used for the length of the rear (east) façade's ground level or first story.
4. That the exposed foundation wall of the south elevation by clad in the same manufactured or cultured masonry material used on the remaining building.
5. Six sets (two on each story) of shutters framed by lintels, trim, and sills that simulate windows must be provided for the second, third, and fourth stories of the rear (east) façade.

V12-10 – Variance relief from Articles 1361.03(E), 1361.03(O)(1), and 1361.03(O)(6) as it relates to fenestration.

1. All windows on the front façade facing Third Street must include lintels, trim, and sills to provide a frame and desired shadowing effect as illustrated on the submitted architectural renderings.

The following summarizes the Board's action on each case.

Board action on Case No. V12-07:

Shaffer moved to accept the Findings of Facts for request V12-07; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. V12-07 as requested; seconded by Shaffer. Motion carried unanimously.

Board action on Case No. V12-29:

Papandreas accept the Findings of Facts as presented by the petitioner; seconded by Shaffer. Motion carried unanimously.

Shaffer moved to approve Case No. V12-29 with Staff's recommended condition; seconded by Papandreas. Motion carried unanimously.

Board action on Case No. CU12-09:

Shaffer moved to accept the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. CU12-09 with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Board action on Case No. V12-08:

Shaffer moved to accept the Findings of Facts as presented by the petitioner; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. V12-08 as requested; seconded by Shaffer. Motion carried unanimously.

Board action on Case No. V12-09:

Papandreas moved to accept the Findings of Facts as presented; seconded by Shaffer. Motion carried unanimously.

Shaffer moved to approve Case No. V12-09 with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Board action on Case No. V12-10:

Shaffer moved to accept the Findings of Facts as presented by the petitioner; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. V12-10 with Staff's recommended condition; seconded by Shaffer. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decisions can be appealed to Circuit Court within thirty days and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- M. V12-30 / Tariq Rai / 22 Vintner Place:** Request by Project Management Services, on behalf of Ansaar Tariq Rai, for variance relief from Article 1333.04 as it relates to a side setback at 22 Vintner Place; Tax Map 55, former Parcel 37; R-1, Single-Family Residential.

Fletcher read the Staff Report stating that the petitioner obtained required building permitting to construct a single-family structure at the corner of Vintner Place and Munsey Street. Addendum A of this report illustrates the location of the subject site.

The petitioner's building permit plans were approved with the correct interior side setback of ten (10) feet. However, Staff did not recognize that the proposed setback along Munsey Street was ten (10) feet rather than the required fifteen (15) feet for a corner lot in the R-1 District.

After construction commenced and framing and roofing was near completion, Staff understands that the petitioner's lender required an as-built survey to be performed. The as-built survey found that the footer and foundation walls were constructed approximately five (5) feet toward the interior side setback resulting in an encroachment of approximately 4.4 feet into the required ten-foot side setback. This shift in building footprint also occurred on the adjoining lot for which a separate variance petition has been submitted (V12-30). The petitioner contacted the Planning Division accordingly and now seeks a 4.4 foot side setback variance from the interior side boundary and a 0.5 foot variance from the corner side boundary.

It should be noted that similar variance relief has been granted within the Vintner Reserve development as well as the neighboring French Quarter development. Additionally, the petitioner's home meets the maximum lot coverage standard for the R-1 District thereby observing required single-family residential density and development scale standards for same.

Cardoso recognized the petitioner's representative Lisa Mardis of Project Management Services, 160 Fayette Street. Mardis stated that there was some confusion during construction of 22 Vintner, which caused the structure to be pushed toward 24 Vintner, which in turn caused a domino effect of non-conforming side setbacks for the remaining structures. She stated that they are really not noticeable to the untrained eye, but the contractor desired to make it right and request the variance.

There being no comments or questions by the Board, Cardoso opened the public hearing portion, asking if anyone was present to speak in favor of or in opposition to the request.

Fletcher read a letter dated Sept 17, 2012, from neighboring residents, in support of the request.

Fletcher read an email from Mr. Russell Foster, 1100 Windsor Avenue, in support of the request.

There being no further public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Staff concurs with the petitioner's findings of fact and recommends approval as requested.

Papandreas stated that he very much appreciates when people take the time to speak in person or take the time to email or write a letter, expressing their support or concern for a particular request. He feels that in this case, the right thing to do would be to grant a Variance.

Shaffer moved to accept the Findings of Facts as presented by the petitioner; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve V12-30 as requested; seconded by Shaffer. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- N. V12-31 / Vintner Reserve / 24 Vintner Place:** Request by Project Management Services, on behalf of Vintner Reserve, LLC, for variance relief from Article 1333.04 as it relates to a side setback at 24 Vintner Place; Tax Map 55, former Parcel 37; R-1 Single Family Residential.

Fletcher read the Staff Report stating that the petitioner obtained required building permitting to construct a single-family structure one lot in from the corner of Vintner Place and Munsey Street. Addendum A of this report illustrates the location of the subject site. The petitioner's building permit plans were approved with the correct interior side setbacks of ten (10) feet.

After construction commenced and framing and roofing was near completion, Staff understands that the petitioner of V12-30 commissioned an as-built survey required by their respective lender. The as-built survey found that the footer and foundation walls constructed for both

houses had shifted from the approved plans resulting in a one (1) foot encroachment of the side setback for the 24 Vintner Place house. The petitioner contacted the Planning Division accordingly and now seeks a one (1) foot variance to encroach into the west side setback requirement.

It should be noted that similar variance relief has been granted within the Vintner Reserve development as well as the neighboring French Quarter development. Additionally, the petitioner's single-family dwelling meets the maximum lot coverage standard for the R-1 District thereby observing required single-family residential density and development scale standards for same.

Cardoso recognized the petitioner's representative Lisa Mardis of Project Management Services, 160 Fayette Street. Mardis stated that the development is a private development and the roads have not been turned over to the City for maintenance. The stone wall around the development is characteristic of the developer and has become a sort of 'signature' of his.

There being no comments or questions by the Board, Cardoso opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Staff concurs with the petitioner's findings of fact and recommends approval as requested.

Shaffer moved to accept the Findings of Facts as presented by the petitioner; seconded by Papandreas. Motion carried unanimously.

Papandreas moved to approve Case No. V12-31 as requested; seconded by Shaffer. Motion carried unanimously.

Cardoso reminded the petitioner that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

V. OTHER BUSINESS:

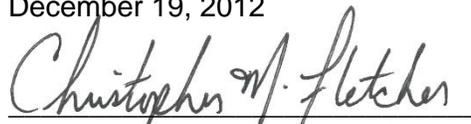
- A. Public Comments (matters not on the agenda): None.
- B. Staff Comments: None.

VI. ADJOURNMENT: 8:40 PM

MINUTES APPROVED:

December 19, 2012

BOARD SECRETARY:


Christopher M. Fletcher, AICP